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13

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA

16 DEAYNA GALLEGOS, an
17 individual,

18 Plaintiff,
19 vs.

20 MERCEDES-BENZ USA, LLC, a
21 Delaware Limited Liability
22 Company,

23 Defendants.

24 Case No.:

25 **COMPLAINT**

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1 Plaintiff DEAYNA GALLEGOS (“Plaintiff”), an individual, alleges as
 2 follows against Defendant, MERCEDES-BENZ USA, LLC, a Delaware Limited
 3 Liability Company (“MERCEDES-BENZ USA, LLC”) on information and belief,
 4 formed after a reasonable inquiry under the circumstances:

5 **INTRODUCTION**

6 1. These causes of action arise out of the warranty obligations of
 7 MERCEDES-BENZ USA, LLC in connection with a vehicle purchased by Plaintiff
 8 and for which MERCEDES-BENZ USA, LLC issued a written warranty.

9 2. On April 26, 2020, Plaintiff purchased a used 2020 Mercedes-Benz
 10 CLA250, having VIN No. WDD5J4GB9LN044397 (“the Subject Vehicle”). Prior to
 11 Plaintiff’s purchase, the Subject Vehicle was a demonstrator vehicle. Subsequently,
 12 Plaintiff is the first consumer. These causes of action arise out of warranty and repair
 13 obligations of MERCEDES-BENZ USA, LLC in connection with a vehicle that
 14 Plaintiff purchased and for which MERCEDES-BENZ USA, LLC issued a written
 15 warranty. The warranty was not issued by the selling dealership.

16 3. The Subject Vehicle was delivered to Plaintiff with serious defects and
 17 nonconformities to warranty and developed other serious defects and
 18 nonconformities to warranty including, but not limited to, engine, electrical,
 19 emission, and transmission system defects.

20 4. Plaintiff hereby revokes acceptance of the sales contract.

21 5. Pursuant to the Song-Beverly Consumer Warranty Act (herein after “the
 22 Act”) Civil Code sections 1790 *et seq.*, the Subject Vehicle constitutes a “consumer
 23 good” used primarily for family or household purposes, and Plaintiff has used the
 24 vehicle primarily for those purposes.

25 6. Plaintiff is a “buyer” of consumer goods under the Act.

26 7. Defendant MERCEDES-BENZ USA, LLC is a “manufacturer” and/or
 27 “distributor” under the Act.

28 8. Plaintiff hereby demands trial by jury in this action.

Plaintiff's Repair History of the Subject Vehicle

9. The following is a summary of some pertinent portions of the repair visits for the Subject Vehicle.

10. On or about September 19, 2020, with approximately 15,820 miles on the odometer, Plaintiff presented the Subject Vehicle to Defendant's authorized repair facility, Mercedes-Benz of Walnut Creek, regarding the electronic control unit for the Supplemental Restraint System (SRS). Defendant's technician verified Plaintiff's complaint, and performed Open Campaign 2020080013 (Clean SRS Control Unit Contacts). The Subject Vehicle was out of service for approximately 1 day during this repair attempt.

11. On or about July 2, 2021, with approximately 27,940 miles on the odometer, Plaintiff presented the Subject Vehicle to Defendant's authorized repair facility, Mercedes-Benz of Walnut Creek, and reported that the "Check Engine" light was illuminated. Defendant's technician verified Plaintiff's complaint, finding Diagnostic Trouble Code ("DTC") P030085, noting the detection of combustion misfiring of cylinder 1 and a signal above the permissible limit value. The technician found Technical Service Bulletin ("LI") 01.30-P-072328. In response, the technician found a leak on the valve of cylinder 1, replaced the cylinder head, topped off the coolant, and cleared all fault codes. The Subject Vehicle was out of service for approximately 13 days during this repair attempt.

12. On or about March 11, 2022, with approximately 32,864 miles on the odometer, Plaintiff presented the Subject Vehicle to Defendant's authorized repair facility, Mercedes-Benz of Walnut Creek, and reported seeing a hold or wait sign on the dashboard upon entering and starting the vehicle. Additionally, Plaintiff reported that when attempting to put the vehicle in reverse, she has to put it in drive several times before the vehicle will engage. Moreover, Plaintiff reported seeing oil on her garage floor. Defendant's technician verified Plaintiff's complaint, finding oil covering the engine cover and oil filled on top of the valve cover. Lastly, Plaintiff

presented the vehicle for performance of Safety Recall #2021060021. No repairs were performed in response to any of Plaintiff's complaints during this repair visit. The Subject Vehicle was out of service for approximately 1 day during this repair attempt.

13. None of the aforementioned repair attempts successfully repaired the Subject Vehicle, including its ongoing defects.

14. Thereafter, Plaintiff continued to experience symptoms of the various defects despite Defendant's representation that the Subject Vehicle was repaired.

15. Defendant was under an affirmative duty under the Song-Beverly Consumer Warranty Act to promptly offer to repurchase or replace the Subject Vehicle as soon as it failed to conform the Subject Vehicle to the terms of the express warranty after a reasonable number of repair attempts.

16. Despite having no obligation to do so, prior to filing this lawsuit, Plaintiff contacted Defendant MERCEDES-BENZ USA, LLC directly and requested a repurchase of the Subject Vehicle due to the ongoing issues that Defendant and its authorized repair facilities could not repair to conform to the terms of its written warranties within a reasonable number of repair opportunities. Defendant denied Plaintiff's request.¹

JURISDICTION AND VENUE

17. This Court has jurisdiction over the subject matter and parties pursuant to 28 U.S.C. § 1332 *et seq.*, because the amount of recovery sought by Plaintiff exceeds the jurisdictional amount of \$75,000.00, there is complete diversity among the parties.

18. The Subject Vehicle, as reflected in the sales contract, has an approximate value of \$55,532.12. Pursuant to the Song-Beverly Act, Plaintiff is

¹ “A manufacturer’s duty to replace a vehicle does not depend on a consumer’s request, but instead arises as soon as the manufacturer fails to comply with the warranty within a reasonable time. *Krotin v. Porsche Cars North America, Inc.*, 38 Cal.App.4th 294, 301-302 (1995). *Krotin* court noted that “[a]n automobile manufacturer need not read minds to determine which vehicles are defective; it need only read dealers’ services records.” *Id.* at 303.

1 seeking general, special, and actual damages, as well as civil penalties, up to two
 2 times the amount of actual damage. As such, Plaintiff seeks in the approximate
 3 amount of \$166,596.36. Plaintiff is also seeking reasonable attorneys' fees under the
 4 Act. Accordingly, Plaintiff's claims meet the jurisdictional threshold required under
 5 28 U.S.C. § 1332 (a).

6 19. Complete diversity exists as Plaintiff, DEAYNA GALLEGOS, is a
 7 citizen of the State of California.

8 20. With respect to Defendant, MERCEDES-BENZ USA, LLC, the
 9 citizenship of limited liability company for diversity jurisdiction purposes is
 10 determined by examining the citizenship of each member of the company. *Johnson*
 11 *v. Columbia Properties Anchorage, LP*, 437 F.3d 894, 899-900 (9th Cir. 2006);
 12 *Rolling Greens MHP, L.P. v. Comcast SCH Holdings, LLC*, 374 F.3d 1020, 1021-22
 13 (11th Cir. 2004). Moreover, a member of a limited liability company is a person who
 14 has been admitted to a limited liability company as a member. *See* Cal. Corp. Code
 15 § 17701.02, subd. (p.); 6 Del. Code § 18-101, subd. (13); 6 Del. Code §§ 18-301 *et*
 16 *seq.*

17 21. Defendant, MERCEDES-BENZ USA, LLC, is a Delaware Limited
 18 Liability Company operating and doing business in the State of California. As
 19 reflected within Defendant's Statement of Information filed with the California
 20 Secretary of State, none of the individual members listed within are citizens of the
 21 state of California. Rather, the Statement of Information expressly indicates a
 22 Georgia address for each listed member. Accordingly, the members of
 23 MERCEDES-BENZ USA, LLC'S are citizens of the state of Georgia and not
 24 California, as reflected within Section D of the Statement of Information, filed by
 25 Defendant on September 15, 2020. A true and correct copy of Defendant, Mercedes-
 26 Benz USA, LLC's Statement of Information is attached herewith as **Exhibit A**.

27 22. As such, none of Defendant's members, as a limited liability company,
 28 are citizens of the state of California. Accordingly, there is complete diversity among

the parties under 28 U.S.C. § 1332 (a)(1), as Plaintiff has now alleged sufficient facts to establish subject matter jurisdiction.²

23. Venue is proper in, and Defendants are subject to, the personal jurisdiction of this Court because the Subject Vehicle was purchased at Mercedes-Benz of Walnut Creek, a MERCEDES-BENZ USA, LLC authorized dealership and repair facility, located at 1301 Parkside Dr., Walnut Creek, CA 94596.

24. Venue is also proper, as Plaintiff, DEAYNA GALLEGOS, is an individual residing in the city of Eureka, State of California.

25. Venue is also proper, as Defendant, MERCEDES-BENZ USA, LLC, is and was a Delaware Limited Liability Company operating and doing business in the State of California.

26. All acts of corporate employees as alleged were authorized or ratified by an officer, director, or managing agent of the corporate employer.

27. Each Defendant, whether actually or fictitiously named herein, was the principal, agent (actual or ostensible), or employee of each other Defendant, and in acting as such principal or within the course and scope of such employment or agency, took some part in the acts and omissions hereinafter set forth by reason of which each Defendant is liable to Plaintiff for the relief prayed for herein.

DEMAND FOR JURY TRIAL

28. Plaintiff, DEAYNA GALLEGOS, hereby demands a trial by jury in this action.

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² The Federal Rules are designed to minimize disputes over pleading technicalities. See *Ashcroft v. Iqbal*, 556 US 662, 678 (2009). A complaint is sufficient if it gives the defendant “fair notice of what the ... claim is and the grounds upon which it rests.” *Bell Atlantic Corporation et al. v. Twombly*, 550 U.S. 544, at 555 (2007); see *Starr v. Baca*, 652 F3d 1202, 1212 (9th Cir. 2011) (discussing traditional liberal theory of Rule 8(a)). In determining the sufficiency of a pleading, allegations of material fact are taken as true and construed in the light most favorable to the pleader. See *Erickson v. Pardus*, 551 US 89, 94 (2007) (emphasis added); see also *Silvas v. E*Trade Mortg. Corp.*, 514 F.3d 1001 (9th Cir. 2008); accord *Proft v. Raoul*, 944 F3d 686, 690 (7th Cir. 2019).

FIRST CAUSE OF ACTION

Violation of the Song-Beverly Act – Breach of Express Warranty

29. Plaintiff incorporates herein by reference each and every allegation contained in the preceding and succeeding paragraphs as though herein fully restated and re-alleged.

30. These causes of action arise out of warranty and repair obligations of MERCEDES-BENZ USA, LLC in connection with a vehicle that Plaintiff purchased and for which MERCEDES-BENZ USA, LLC issued a written warranty. The warranty was not issued by the selling dealership.

31. The Subject Vehicle was delivered to Plaintiff with serious defects and nonconformities to warranty and developed other serious defects and nonconformities to warranty including, but not limited to, engine, electrical, emission, and transmission system defects.

32. Pursuant to the Song-Beverly Consumer Warranty Act (herein after "the Act") Civil Code sections 1790 *et seq.*, the Subject Vehicle constitutes a "consumer good" used primarily for family or household purposes, and Plaintiff has used the Subject Vehicle primarily for those purposes.

33. Plaintiff is a “buyer” of consumers goods under the Act.

34. Defendant MERCEDES-BENZ USA, LLC is a "manufacturer" and/or "distributor" under the Act.

35. The foregoing defects and nonconformities to warranty manifested themselves in the Subject Vehicle within the applicable express warranty period. The nonconformities substantially impair the use, value, and/or safety of the vehicle.

36. Plaintiff delivered the Subject Vehicle to an authorized MERCEDES-BENZ USA, LLC repair facility for repair of the nonconformities.

37. Defendant was unable to conform the Subject Vehicle to the applicable express warranty after a reasonable number of repair attempts.

38. Notwithstanding Plaintiff's entitlement, Defendant MERCEDES-

1 BENZ USA, LLC has failed to either promptly replace the new motor vehicle or to
2 promptly make restitution in accordance with the Song-Beverly Act.

3 39. By failure of Defendant to remedy the defects as alleged above, or to
4 issue a refund or replacement vehicle, Defendant is in breach of its obligations under
5 the Song-Beverly Act.

6 40. Under the Act, Plaintiff is entitled to reimbursement of the price paid
7 for the Subject Vehicle, less that amount directly attributable to use by the Plaintiff
8 prior to the first presentation of the nonconformities.

9 41. Plaintiff is entitled to all incidental, consequential, and general damages
10 resulting from Defendant's failure to comply with its obligations under the Song-
11 Beverly Act.

12 42. Plaintiff is entitled under the Song-Beverly Act to recover as part of the
13 judgment a sum equal to the aggregate amount of costs and expenses, including
14 attorney's fees, reasonably incurred in connection with the commencement and
15 prosecution of this action.

16 43. Because Defendant willfully violated the Song-Beverly Act, Plaintiff is
17 entitled in addition to the amounts recovered, a civil penalty of up to two times the
18 amount of actual damages for MERCEDES-BENZ USA, LLC's willful failure to
19 comply with its responsibilities under the Act.

SECOND CAUSE OF ACTION

Violation of the Song-Beverly Act – Breach of Implied Warranty

22 44. Plaintiff incorporates herein by reference each and every allegation
23 contained in the preceding and succeeding paragraphs as though herein fully restated
24 and re-alleged.

25 45. MERCEDES-BENZ USA, LLC and its authorized dealership at which
26 Plaintiff purchased the Subject Vehicle, had reason to know the purpose of the Subject
27 Vehicle at the time of sale of the Subject Vehicle. The sale of the Subject Vehicle
28 was accompanied by implied warranties provided for under the law.

1 46. Among other warranties, the sale of the Subject Vehicle was
2 accompanied by an implied warranty that the Subject Vehicle was merchantable
3 pursuant to Civil Code section 1792.

4 47. The Subject Vehicle was not fit for the ordinary purpose for which such
5 goods are used because it was equipped with one or more defective vehicle
6 systems/components.

7 48. The Subject Vehicle did not measure up to the promises or facts stated
8 on the container or label because it was equipped with one or more defective vehicle
9 systems/components.

10 49. The Subject Vehicle was not of the same quality as those generally
11 accepted in the trade because it was sold with one or more defective vehicle
12 systems/components which manifested as engine, electrical, emissions, and
13 transmission system defects.

14 50. Upon information and belief, the defective vehicle systems and
15 components were present at the time of sale of the Subject Vehicle; thus, extending
16 the duration of any implied warranty under *Mexia v. Rinker Boat Co., Inc.* (2009) 174
17 Cal.App.4th 1297, 1304–1305 and other applicable laws.

18 51. Plaintiff is entitled to justifiably revoke acceptance of the Subject
19 Vehicle under Civil Code, section 1794, *et seq.*

20 52. Plaintiff hereby revokes acceptance of the Subject Vehicle.

21 53. Plaintiff is entitled to replacement or reimbursement pursuant to Civil
22 Code, section 1794, *et seq.*

23 54. Plaintiff is entitled to rescission of the contract pursuant to Civil Code,
24 section 1794, *et seq.* and Commercial Code, section 2711.

25 55. Plaintiff is entitled to recover any incidental, consequential, and/or
26 “cover” damages under Commercial Code, sections 2711, 2712, and Civil Code,
27 section 1794, *et seq.*

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THIRD CAUSE OF ACTION

Violation of the Song-Beverly Act Section 1793.2(b)

3 56. Plaintiff incorporates herein by reference each and every allegation
4 contained in the preceding and succeeding paragraphs as though herein fully restated
5 and re-alleged.

57. Pursuant to Civil Code, section 1793.2, subdivision (a) a manufacturer
that sells consumer goods in California, for which it has made an express warranty,
shall maintain service and repair facilities or designate and authorize independent
service and repair facilities to carry out the terms of those warranties.

58. Pursuant to Civil Code, section 1793.2, subdivision (b), when service and repair of goods are necessary because they do not conform with the applicable express warranties, service and repair shall be commenced within a reasonable time by the manufacturer or its representative.

14 59. Civil Code, section 1793.2, subdivision (b) further states that goods
15 shall be serviced or repaired so as to conform to the applicable warranties within 30
16 days and/or within a reasonable time.

17 60. The sale of the Subject Vehicle was accompanied by express warranties,
18 including a warranty guaranteeing that the subject vehicle was safe to drive and not
19 equipped with defective parts, including the engine, electrical, emission, and
20 transmission system defects.

21 61. Plaintiff delivered the Subject Vehicle to MERCEDES-BENZ USA,
22 LLC's authorized service representatives on multiple occasions. The Subject Vehicle
23 was delivered for repairs of defects, which amount to nonconformities to the express
24 warranties that accompanied the sale of the Subject Vehicle.

25 62. Defendant's authorized facilities did not conform the Subject Vehicle to
26 warranty within 30-days and/or commence repairs within a reasonable time and
27 MERCEDES-BENZ USA, LLC has failed to tender the Subject Vehicle back to
28 Plaintiff in conformance with its warranties within the timeframes set forth in Civil

1 || Code section 1793.2(b).

2 63. Plaintiff is entitled to justifiably revoke acceptance of the Subject
3 Vehicle under Civil Code, section 1794, *et seq.*

4 64. Plaintiff hereby revokes acceptance of the Subject Vehicle.

5 65. Plaintiff is entitled to replacement or reimbursement pursuant to Civil
6 Code, section 1794, *et seq.*

7 66. Plaintiff is entitled to rescission of the contract pursuant to Civil Code
8 section 1794, *et seq.* and Commercial Code, section 2711.

9 67. Plaintiff is entitled to recover any “cover” damages under Commercial
10 Code sections 2711, 2712, and Civil Code, section 1794, *et seq.*

11 68. Plaintiff is entitled to recover all incidental and consequential damages
12 pursuant to 1794 *et seq.* and Commercial Code sections, 2711, 2712, and 2713 *et seq.*

13 69. Plaintiff is entitled in addition to the amounts recovered, a civil penalty
14 of up to two times the amount of actual damages in that MERCEDES-BENZ USA,
15 LLC has willfully failed to comply with its responsibilities under the Act.

PRAYER FOR RELIEF

17 1. For general, special, and actual damages according to proof at trial;

18 2. For rescission of the purchase contract and restitution of all monies expended;

19 3. For diminution in value;

20 4. For incidental and consequential damages according to proof at trial;

21 5. For civil penalty in the amount of two times Plaintiff's actual damages;

22 6. For prejudgment interest at the legal rate;

23 7. For reasonable attorneys' fees and costs of suit; and

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8. For such other and further relief as the Court deems just and proper under the circumstances.

Dated: June 7, 2022

QUILL & ARROW, LLP

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